1205.

SUPREME COURT OF THE UNITED STATES.

No. 144.

THE UNITED STATES, ON THE RELATION OF HORATIO R. MERRYMAN, PLAINTIFF IN ERROR,

vs.

THE MAYOR, BOARD OF ALDERMEN, AND BOARD OF COMMON COUNCIL OF THE CITY OF WASHINGTON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

INDEX.

	Original.	Print.
Writ of error	2	2
Citation	3	2
Copy of appeal bond	4	3
Style of court	6	3
Parties	6	4
Petition for quo warranto	7	4
Rule to show cause why, &c.	9	5
Answer of defendants to rule	11	6
Contract of D. S. Gregory	19	9
D. S. Gregory's bond	25	12
Gregory & McIntyre's contract with Corporation of Alexandria	28	13
Bond between said parties	36	17
Judgment of court dismissing petition and discharging rule	39	18
Bill and amendments to suppress the vending of lottery tickets in the District of Columbia	40	19
Writ of error produced	47	22
Clerk's certificate and seal	47	22

J. & G. S. Gideon, printers.

Writ of error.

United States of America, sct:

The President of the United States, to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, between the United States, on the relation of Horatio R. Merryman, plaintiff, and the Mayor, Board of Aldermen, and Board of Common Council, defendants, a manifest error has happened, to the great damage of the said plaintiff, as by his complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same there on the first Monday of December next, in the said Supreme Court, then and there had and held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Signed this 12th day of November, 1845.

W. BRENT, *Clerk.*

Citation.

District of Columbia, to wit:

The United States of America, to the Mayor, Board of Aldermen, and Board of Common Council of the city of Washing , greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein the United States, on the relation of Horatio R. Merryman, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment, rendered against the said plaintiffs in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the circuit court of the District of Columbia, this 12th day of November, 1845.

W. CRANCH.

Service acknowledged.

JOS. H. BRADLEY,
9th December, 1845. *Att'y for Corp. Wash*

Copy of appeal bond.

Know all men by these presents, that we, Horatio N. Merreyman and Oscar D. Thompson, are held and firmly bound unto the Mayor, Board of Aldermen, and Board of Common Council of the city of Washington, in the full and just sum of two hundred dollars, current money, to be paid to the said Mayor, Board of Aldermen, and Board of Common Council of the city of Washington, their certain attorney or assigns; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twelfth day of November, anno domini eighteen hundred and forty-five.

Whereas lately, at a circuit court of the District of Columbia, sitting in and for the county of Washington, in a cause wherein the United States, on the relation of Horatio R. Merryman, was plaintiff, and the said Mayor, Board of Aldermen, and Board of Common Council of the city of Washington, was defendants, judgment was rendered against the said plaintiff, and they, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Mayor, Board of Aldermen, and Board of Common Council of the city of Washington, citing and admonishing them to be and appear a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next.

Now, the condition of the above obligation is such, that if the said United States, on the relation of Horatio R. Merryman, shall prosecute their suit to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

H. R. MERRYMAN, [SEAL.]
O. D. THOMPSON. [SEAL.]

Signed, sealed, and delivered in presence of—

Approved. W. CRANCH.
True copy, test: W. BRENT, *Clerk.*

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-fourth day of the same month, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the sixty-ninth—

Present: The Hon. William Cranch, chief judge, Buckner Thrus-

ton and James S. Morsell, assistant judges; Alexander Hunter, esquire, marshal.

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

UNITED STATES, on the relation of Horatio R. Merryman,
vs.
THE CORPORATION OF WASHINGTON.

Be it remembered, that the said relator, by Robert J. Brent, esquire, his attorney, filed in court here, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and forty-five, the following petition, to wit:

Petition for quo warranto.

Philip R. Fendall, district attorney of the United States, who sues for the United States, at the relation of Horatio R. Merryman, in this behalf, comes here before the circuit court of the District of Columbia for Washington county, and for the said United States gives the court here to understand and be informed, that the Mayor, Board of Aldermen, and Board of Common Council, of the city of Washington, for the space of eighteen months, now last past, and more, have used, and still do use, without any warrant, charter, or grant, the following liberty, privilege, and franchise, to wit, that of licensing the vending of lottery tickets within the corporate limits of the city of Washington, by issuing licenses therefor as follows, viz: A license to John Hand, jr., dated 11th December, 1844; a license to F. A. Harry, dated 31st December, A. D. 1844; a license to Raymond, dated 10th December, 1844; a license to Thomas E. France, dated 6th May, 1845, and divers other licenses to other persons; which said liberty, privilege, and franchise, the said Mayor, Board of Aldermen, and Board of Common Council, of the city of Washington, during all the time aforesaid, have usurped, and still do usurp, upon the said United States, to their great damage and prejudice. Whereupon the said attorney of the United States prays advice of the said court in the premises, and due process of law against the said Mayor, Board of Aldermen, and Board of Common Council, of the city of Washington, in this behalf to be made, to answer to the said United States by what warrant they claim to have, use, and enjoy the liberties, privileges, and franchises aforesaid.

R. J. BRENT,
For the relator.

District of Columbia, Washington county, to wit:

In open court personally appears Horatio R. Merryman, the relator in the aforegoing information, and made oath on the Holy Evangely of Almighty God that the facts of the Mayor, and Board of Aldermen, and Board of Common Council, of the city of Washington, having issued licenses for vending lottery tickets, as above set forth, are true, and that he is advised that the same are without warrant of law. But deponent

further saith, that he made application to Charles Wiltberger, register of said corporation, to ascertain whether the aforegoing information truly contains the dates of the several licenses therein named, but the deponent was refused, by said Wiltberger, an inspection of the corporation books, the said Wiltberger saying, at the same time, that all of the persons named in the aforegoing information as having lottery licenses were licensed by said corporation; that deponent hath derived his information as to the dates of the several licenses from other persons, but he believes said dates to be correct as above set forth.

Test: W. BRENT, *Cl'k.*

24th May, 1845.

Thereupon the court, on motion of the relator, by his attorney aforesaid, passed the following rule:

Rule to show cause, &c.

Circuit court of the District of Columbia, for the county of Washington, March term, 1845.

It being formally represented to this court that the Mayor, Board of Aldermen, and Board of the Common Council, of the city of Washington, for the space of eighteen months now last past, have used, and still do use, without any warrant, charter, or grant, the liberty, privilege, and franchise, of licensing the vending of lottery tickets within the corporate limits of the said city of Washington, by issuing licenses therefor to John Hand, to F. A. Harry, to Raymond, to Thomas E. France, and to divers other persons; which said liberty, privilege, and franchise, the said Mayor, Board of Aldermen, and Board of Common Council, during all the times aforesaid, have usurped, and still do usurp, upon the United States, to their great damage and prejudice; and application has been made to this court for the United States' writ of quo warranto against the said Mayor, Board of Aldermen, and Board of Common Council, to answer by what warrant they claim, &c., &c., &c.

It is, therefore, this 24th day of May, 1845, ordered, that the said Mayor, Board of Aldermen, and Board of Common Council, of the city of Washington, shew cause on Saturday, the 7th day of June, (next,) if any they have, why the United States, writ of quo warranto shall not issue against them, as prayed for, &c., &c.

Test: W. BRENT, *Cl'k.*

24th May, 1845.

A copy of which said rule was made and served on William W. Seaton, esq., Mayor of the city of Washington, by the marshal of the District of Columbia, and so certified to the court.

At which said seventh day of June, in the year of our Lord one thousand eight hundred and forty-five, personally appeared in court here, as well the said relator, by his attorney aforesaid, as the said Corporation of Washington, by Joseph H. Bradley, esq., its attorney; and the said Corporation of Washington, by its attorney aforesaid, filed in court here the following answer and exhibits, to wit:

Answer of defendants.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington:

The Mayor, Board of Aldermen, and Board of Common Council of the city of Washington, responding to the rule laid upon them by your honors, to show cause why a writ of quo warranto shall not be issued to restrain them from granting licenses to the vendors of lottery tickets, by their attorney, Jos. H. Bradley, come into court, and say: that, by the act of incorporation heretofore, by the Congress of the United States, granted to these respondents, bearing date the 15th day of May, 1820, and in the 7th section thereof, power is given to them to provide for licensing, "taxing, and regulating * * * venders of lottery tickets," and "to restrain and prohibit * lotteries."

These powers these respondents have, from time to time, and without objection, exercised, and have passed several ordinances, to some of which they beg leave to refer: On the 4th January, 1827, they passed an act entitled "An act to restrain and prohibit certain lotteries;" by the 3d section of which it is provided, "that no licensed vendor of lottery tickets, or other person, shall sell any ticket, or part or parts of any ticket, in a private or illegal lottery, or in any lottery not specially permitted and authorized by law of some State or Territory of the United States, or law of the Congress of the United States, or act of this corporation, under the penalty of fifty dollars for each and every offence." Roth. Dig. 186.

On the 22d December, 1842, they passed another act, entitled "An act relative to licenses for vending lottery tickets," by the second section of which it is enacted, "that from and after the 1st day of January, 1843, every license for the sale of lottery tickets within this corporation, shall be issued by the register, in conformity with the provisoes in the 2nd section of the act of Congress, entitled "An act to suppress the vending of lottery tickets in the District of Columbia," approved August 31st, 1842. (Pamph. 45 Coun., p. 24.) These two ordinances are still in force, and the only municipal laws now relating to the subject.

On the 31st August, 1842, Congress passed an act, entitled "An act to suppress the vending of lottery tickets in the District of Columbia," of which a true copy is herewith filed, (copied in page .) This is all the legislation directly bearing on the subject, by which it will be seen, first, that the power was expressly given; second, that it has been exercised strictly, and in terms according to the law of the land, by prohibiting, in the first place, the sale of tickets in any lottery not authorized by a law of a State or Territory, or by Congress; third, that the power has never been expressly taken away; and, finally, the licenses now granted in terms refer to, and are directly subordinate to, the act of Congress of 31 Aug., 1842; and they furnish herewith the form of the license granted.

It is not for these respondents to say whether there is or is not, now, any lottery authorized by any act of Congress; but if there is, it is

clearly their power and duty to license and regulate the sale of tickets therein within their corporate limits. And here these respondents might rest their answer. But they are advised it is material and proper to have this vexed question, whether there is or not any such legally authorized lottery, settled, and they submit to your honors this further answer to the said rule. These respondents have shown to your honors their charter and by-laws, and the act of Congress, and they now propose to show that there is now existing in this District a right granted by Congress to raise money by lottery, which is saved by the act of 31 August, 1842.

On the 13th May, 1826, Congress passed an act, entitled "*An act further to amend the charter of the town of Alexandria,*" by which they authorized the corporation of Alexandria, with the approbation of the President of the United States, to draw a series of lotteries "for effecting any important improvement in and to the town." Executing the power thus conferred upon it, that corporation, on the 5th December, 1827, enacted, that the sum of sixty thousand dollars, in sums not exceeding ten thousand dollars per annum, should be raised by a series of schemes of lotteries, the products of which should be appropriated towards the completion of the road of the Middle Turnpike Company; and on the 26th day of February, 1828, that ordinance was approved by the President of the United States, (and they file herewith certified copies of that ordinance, and of the said approval of the President of the United States.)

In order to effect this object, and to draw these lotteries, the said corporation of Alexandria, on the 25th day of January, 1836, entered into a certain contract with Dudley S. Gregory, who proceeded to pay the instalment provided for by his contract. Afterwards, with the consent of the said corporation, and under the express powers retained in his contract, on the 16th day of June, 1841, uniting with the said corporation, the said Gregory assigned his said contract to James G. Gregory and Daniel McIntyre, and the said corporation thereupon entered into a new contract with the said James G. Gregory and Daniel McIntyre, which is still in force and not completed. By this contract the said James G. Gregory and Daniel McIntyre undertook to pay to the said corporation, in consideration of the rights and privileges vested in them by the said contracts, the sum of five thousand dollars per annum, in two equal half-yearly instalments, until they shall have paid the sum of $35,000, being the balance of the said sum of $60,000 to be raised under the said ordinance of the 5th Dec., 1827, $25,000 having been previously paid by D. S. Gregory.

These respondents are advised, and expressly maintain, that the said act of Congress of the 13th May, 1826, the ordinance of the said corporation, approved by the President as aforesaid, and the said contract, have conferred on the said James G. Gregory and Daniel McIntyre a vested right till the month of December, 1847, to draw lotteries in this District; that that is coextensive with the District, and cannot constitutionally be impaired; that if it is in any manner to be affected, it must

be in the mode pointed out in the contract itself; and that any other proceeding, by which its use and enjoyment shall be impaired, would be a clear and illegal exercise of power over equally clear and vested legal rights, and therefore unlawful. They file herewith a true copy of the said contract, (copied in page 28.)

They further show to your honors, that this matter has received a legislative construction which emphatically recognises the existence of this right. Previous to the 1st June, 1842, the corporation of Georgetown did not possess, by its charter, any express grant of power to license and regulate lottery vendors. But on the 1st of June, 1842, the Committee of the District of Columbia, in the House of Representatives having previously reported two bills, the one entitled "*An act to suppress the vending of lottery tickets in the District of Columbia*," a true copy of which, as reported, is herewith filed; and on the same day another, entitled "*An act to extend the jurisdiction of the corporation of Georgetown.*" Both bills were on that day taken up and past; and by the last power was, for the first time, given to that corporation to tax vendors of lottery tickets. On referring to the first of these bills, it will be seen that provision is made to prevent its interfering with any contract subsisting previous to the first day of June, 1842, between the corporate authorities of either of the cities of the said District and any individual or individuals, under any grant in their respective charters. And these respondents aver, and offer themselves ready to prove and show, that the existence of this identical contract was brought to the knowledge of the said House, and the said proviso was suggested by the attorney of these respondents, and was put in the said bill with express reference to it. And they file a true copy of the said bill, as reported as aforesaid, with and without the said proviso.

They further show that these two bills were sent to the Senate; the second of said bills having been passed with the said proviso; and the bill to extend the jurisdiction of Georgetown was passed, and afterwards became a law without amendment. But the bill to suppress the vending of lottery tickets being referred to the Committee on the District of Columbia, that committee reported it to the Senate with an amendment; a true copy of which also is herewith filed.

On reference to this amended bill, it will be seen that it entirely remodelled the former, and the proviso was so modified that nothing therein contained should be construed to restrain the selling of lottery tickets *within the limits of the municipal corporation of the city of Alexandria*, so far as the same was authorized by any existing contract, &c. (A true copy of this is filed herewith.)

This bill, thus amended, was passed by the Senate, and sent to the House, and passed by the House with an amendment, by which the proviso in the second section was stricken out, and another inserted, providing "that nothing therein contained should be construed to impair or interfere with any lawful contract theretofore entered into by the corporate authorities of any of the cities or towns in the District of Columbia, authorizing and licensing the drawing of a lottery or lotteries, or

the sale of lottery tickets, or shares, or interests in lottery tickets; but the privileges conferred by such contracts, or licenses, should remain as though that act had not been passed," &c.

Thus amended, the bill was returned to the Senate, and was there opposed, as these respondents are advised, and offer to prove, on the ground that, between the passing of the bill by the two Houses of Congress, and its approval by the President, the said cities might enter into new and unlimited contracts, by which the whole object of the law would be defeated. The Senate then disagreed to the amendment of the House, and returned the bill to the House, and the House insisted on its amendment; and, according to its usage and rules, asked a conference with the Senate. This conference was had, and resulted in the bill now before your honors; and these respondents file herewith certified copies of the proceedings of the said Congress, showing the facts aforesaid.

These respondents then show to your honors, that by their charter they have power to license and regulate vendors of lottery tickets; that this power has never been taken away from them by any express law. That Congress itself has granted to the town of Alexandria power to raise money by lottery; that Alexandria, exercising this power, has entered into a contract with certain individuals, by which, for a valuable consideration, they have given them power to draw lotteries. That Congress, intending to restrain, but not entirely to prohibit, the sale of lottery tickets, has passed a law, giving to Georgetown the right to tax lottery vendors; that, by another law, they have expressly affirmed the rights of the parties, under the said contract with the town of Alexandria, as valid subsisting vested rights; and in legislating to restrain the vending of lottery tickets, they have prohibited the sale of tickets in any other lottery, except those drawn under said contract. And thus these respondents have shown to your honors a lawful lottery, and a subject on which to exercise their power of licensing and regulating the vending of lottery tickets; and, finally, they have shown to your honors their license, strictly consistent with and limited to this law.

And they pray to be hence dismissed, with their reasonable costs.

Contract of D. S. Gregory.—*Contract of D. S. Gregory.*

Articles of agreement, made and concluded this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and thirty-six, between the Common Council of Alexandria, in the District of Columbia, of the one part, and Dudley S. Gregory, of Jersey City, and State of New Jersey, of the other part:

The said party of the first part, by a certain act of Congress, entitled "An act further to amend the charter of the town of Alexandria," approved May 13th, 1826, having been authorized, with the approbation of the President of the United States, to draw lotteries "for effecting any important improvement in and to town," and the said party of the first part, by virtue of said authority, having, in their corporate capacity, enacted that the sum of sixty thousand dollars, in sums not more than

ten thousand dollars per annum, may be raised by a series of schemes of lotteries; the products of such lotteries to be appropriated towards the completion of the road of the Middle Turnpike Company; which act of the Common Council of Alexandria, passed December 5th, 1827, was approved by the President of the United States on the 26th day of February, 1828, and the said party of the first part having agreed to dispose of said right of drawing schemes of lotteries, for raising said sum of money, unto the said Dudley S. Gregory:

Now, this indenture witnesseth, that the said party of the first part, for and in consideration of the sum of money hereinafter mentioned to be paid by the said Dudley S. Gregory, have agreed, and do by these presents agree, to sell, dispose, assign, transfer, and set over, and do sell, dispose, assign, transfer, and set over, to, and appoint the said Dudley S. Gregory sole manager and conductor of said lottery or lotteries, and transfer to him the sole and exclusive right to draw such scheme or schemes of a lottery or lotteries, under and by virtue of the said act of the common council of Alexandria, as he shall from time to time deem expedient and proper.

And the said Dudley S. Gregory, on his part, does hereby agree to assume the management of the said lottery or lotteries, for the purpose of raising the aforesaid sum of sixty thousand dollars; and, upon the execution of this agreement, to pay, towards raising the aforesaid sixty thousand dollars, the sum of one thousand five hundred dollars, as the consideration in full for the use of the right hereby conveyed, until the first day of July, one thousand eight hundred and thirty-six; and thereafter to pay, for the further use of said right, the sum of five thousand dollars per annum, in half-yearly payments of two thousand five hundred dollars each; that is to say, on the said first day of July, one thousand eight hundred and thirty-six, to pay in advance the sum of two thousand five hundred dollars; and so on, to pay for each six months, in advance, the like amount of two thousand five hundred dollars, on the first day of January and first day of July, in each succeeding year, until the whole of the aforesaid sum of sixty thousand dollars shall thus have been raised. And the said Dudley S. Gregory does hereby agree to pay, from time to time, all expenses, costs, and charges attending the drawings, sustain all risks, hazards, losses, and expenses whatsoever; and shall, at the expiration of forty days after the drawing of said lottery or lotteries, pay each and every prize that may be drawn therein, subject to the usual deduction of fifteen per centum, if demanded within twelve months after the drawing, which said fifteen per centum, and all outlawed prizes, to belong to the said Dudley S. Gregory. And the said Dudley S. Gregory, before he proceeds to sell the tickets of any lottery, in pursuance and by virtue of this agreement, shall execute and deliver, jointly with two sufficient sureties, to be approved by the common council of Alexandria, a bond, conditioned in the penal sum of one hundred thousand dollars, for the faithful execution of this contract; the due and faithful performance of every duty in the management of said lottery or lotteries, and for the due payment of

the sums hereinbefore stipulated to be paid to the party of the first part, and of all prizes that may be drawn in said lottery or lotteries. And the said party of the first part do hereby agree, that the said Dudley S. Gregory shall, in case he may, at any time hereafter, elect so to do, have the power to assign his right, under this agreement, to some other person or persons, who shall, in such case, be bound to comply with the terms of this agreement, and be obliged to give the bond and security required by the before mentioned act of the common council of Alexandria, and by this contract agreed to be done by the said Dudley S. Gregory, which bond and security shall be first approved by the mayor of the corporation of Alexandria. And the said Dudley S. Gregory, and his assigns, shall, if at any time it be found necessary so to do, have the right of consolidating the said lottery or lotteries with the lottery or lotteries of any other State or Territory, which may be under his or their management, without limitation as to the amount of such consolidated schemes, or as to the number of drawings, whether within the District of Columbia or out of it. And the said Dudley S. Gregory further agrees, that he will cause to be distinctly printed, on the face of the tickets which may be drawn in every lottery under this contract, the following words: "*The contractor and manager, with his sureties, are* are alone responsible for the payment of the prizes," it being understood and agreed between the said Dudley S. Gregory and the party of the first part, that the said party of the first part are not to be responsible for the payment of the said prizes. And the said party of the first part do hereby agree, that the said Dudly S. Gregory, and his assigns, may abandon, and shall at all times be exonerated from the performance of, this contract, or, ceasing to be a manager or managers of the said lottery or lotteries, or any responsibility under, or by virtue of, this agreement, by giving twelve months' notice of such intention to abandon to the said mayor, or any of the said party of the first part, and paying any money or moneys due, to the period of abandonment; and also, that the said Dudley S. Gregory, and his assigns, shall not be bound by this agreement, in the event of such interference by the *Legislature*, Judiciary, or other competent power, that the lottery business cannot be conducted, nor the drawing of schemes take place, in the District; in which case, payment to be made up to the time of such interference only.

In witness whereof the said Dudley S. Gregory has hereto set his hand and seal, and the said party of the first part have executed the same by affixing thereto their corporate seal, and the mayor signing the same in virtue of a resolution entered into for that purpose.

BERNARD HOOE, [SEAL.]
Mayor of Alexandria.
D. S. GREGORY. [SEAL.]

Signed, sealed, and delivered, in presence of—
Witnesses to the execution by D. S. Gregory—
JOHN B. JAMES, HENRY STEELE.

A true copy. Teste, R JOHNSON, *C. C.*

Bond of D. S. Gregory.

DUDLEY S. GREGORY to COMMON COUNCIL OF ALEXANDRIA. } Bond.

Know all men by these presents, that we, Dudley S. Gregory, of Jersey city, and State of New Jersey, and Archibald Robertson, of the city of Philadelphia, and State of Pennsylvania, and David Henderson, of Jersey city, and State of New Jersey, are held and firmly bound unto the Common Council of Alexandria in the penal sum of one hundred thousand dollars, to be paid to the said common council, or their certain attorney; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and thirty-six.

Whereas, by an act of the Congress of the United States, entitled "An act further to amend the charter of the town of Alexandria, approved 13th May, 1826, it is enacted that the Common Council of Alexandria shall have power, &c., to authorize, with the approbation of the President of the United States, the drawing of lotteries for effecting any important improvement in and to the town." And whereas, by an act of the Common Council of Alexandria, passed 5th of December, 1827, and approved of by the President of the United States, 26th of February, 1828, it is enacted: "Sec. 1. That the sum of sixty thousand dollars, in sums not more than ten thousand dollars per annum, may be raised by a series of schemes of lotteries, to be drawn by commissioners or agents appointed by the Common Council; that the products of such lotteries shall be appropriated towards the completion of the road of the Middle Turnpike Company, from the intersection of the Leesburg Turnpike Road, in Fairfax county, to Alexandria." And Sec. 2. It is further enacted, "That for all such scheme or schemes of lotteries that may, in pursuance of this act, be drawn either by agents, or by persons who may purchase one or more schemes thereof, sufficient security shall be taken by the Mayor, and approved by the Common Council, for the faithful performance of every duty in the management thereof, for the due payment of all money stipulated to be paid to the Common Council for such schemes, and of all prizes that may be drawn therein." And whereas, that previously *by* to the signing of these presents, the aforesaid Dudley S. Gregory has contracted with the Common Council of Alexandria for the sole and exclusive right to draw a scheme or schemes of a lottery or lotteries in virtue of, and conformity with, the provisions of said acts:

Now, therefore, the condition of the above obligation is such, that if the said Dudley S. Gregory, or his heirs, executors, administrators, and assigns, do, and shall well and truly pay to the holder or holders of any and every prize or prizes, in any and every scheme or schemes of a lottery or lotteries which may and shall be drawn in virtue and pursuance

of the contract and acts aforementioned, or which shall purport so to be, as such prize or prizes may become due, and be legally demanded by the holder or holders thereof, or his, her, or their lawful agent or agents, within the time stipulated on the face of the ticket or tickets, and shall also well and truly pay, or cause to be paid, to Common Council of Alexandria, the several sums of money stipulated on the part of the said Dudley S. Gregory to be paid, under and in the contract aforesaid, and at the times fixed and limited therein for paying the same, and shall in all respects execute and perform the stipulations in the said contract contained on his part to be executed and performed, then the above obligation to be void, else to be and remain in full force and virtue in law.

Signed, D. S. GREGORY, [SEAL.]
D. HENDERSON, [SEAL.]
ARCH'D ROBERTSON. [SEAL.]

Signed, sealed, and delivered in presence of—
Witnesses to the execution by D. S. Gregory and D. Henderson—
JOHN B. JAMES, HENRY STEEL.
To the execution, by Arch'd Robertson—
DAN'L MCINTYRE, CHAS. H. ROGERS.

True copy. Teste, R. JOHNSTON, *C. C.*

Contract of the Corporation of Alexandria with Gregory & McIntyre.

THE CORPORATION OF ALEXANDRIA, D. C., with J. G. GREGORY AND DAN'L MCINTYRE. (Referred to in page 15.) } Contract.

Whereas a contract was made, on the 25th day of January, 1836, between the common council of Alexandria, in the district of Columbia, and Dudley S. Gregory, of Jersey city, in the State of New Jersey, for the purpose of raising to the said common council, by lottery, the sum of sixty thousand dollars, or as much thereof as the said Dudley S. Gregory was bound to raise during the time he should continue the said contract; and whereas the said common council has received from the said Gregory, for the use of the said lottery privilege, up to the first day of July, one thousand eight hundred and forty-one, the sum of twenty-six thousand five hundred dollars, leaving an amount yet to be raised to the said common council of thirty-three thousand five hundred dollars; and whereas the said Dudley S. Gregory was given the power, by the said contract, to assign his right in the same to some other person or persons, who would be bound to comply with its terms, and give required bond and security; which bond and security to be first approved by the mayor of the corporation of Alexandria; and the said Dudley S. Gregory having, with the assent, and at the request of the said common council, assigned and transferred over, unto James G. Gregory and Daniel McIntyre, all his rights, interests, and privileges in said contract, from and after the first day of July, one thousand eight

hundred and forty-one; and the said common council having signified their approval of the sureties of the said James G. Gregory and Daniel McIntyre, have offered to join them in the required bond; which bond is to be received by the said common council in lieu of the bond given by the above mentioned Dudley S. Gregory, it being fully understood that the said Dudley S. Gregory, and his sureties, shall be relieved from all responsibility of any and every kind, in consequence and by virtue of this said contract, except for his transactions under it, up to the said first day of July, one thousand eight hundred and forty-one. Therefore, in order that the contract to raise the aforesaid sum of money be continued, the following agreement is entered into, and for the purpose of recapitulating the terms and conditions of the same.

Articles of agreement made and concluded this sixteenth day of June, in the year of our Lord one thousand eight hundred and forty-one, between the Common Council of Alexandria, in the District of Columbia, of the one part, and James G. Gregory, of Jersey City, in the State of New Jersey, and Daniel McIntyre, of the city of Philadelphia, of the other part:

The said party of the first part, by a certain act of Congress, entitled "An act further to amend the charter of the town of Alexandria," approved the 13th day of May, 1826, having been authorized, with the approbation of the President of the United States, to draw lotteries "for effecting any important improvement in and to the town;" and the said party of the first part, by virtue of the said authority, having, in their corporate capacity, enacted that the sum of sixty thousand dollars, in sums not more than ten thousand dollars per annum, may be raised by a series of schemes of lotteries—the products of such lotteries to be appropriated towards the completion of the road of the "Middle Turnpike Company;" which act of the Common Council of Alexandria, passed December 5th, 1827, was approved by the President of the United States on the 26th day of February, 1828; and the said party of the first part having agreed to dispose of said right of drawing schemes of lotteries for raising the amount, which has yet to be raised of the said sum of money, unto the said James G. Gregory and Daniel McIntyre, from and after the first day of July, eighteen hundred and forty-one.

Now, this indenture witnesseth, that the said party of the first part, for and in consideration of the sum of money hereinafter mentioned to be paid by the said James G. Gregory and Daniel McIntyre, have agreed, and by these presents agree, to sell, dispose, assign, transfer, and set over, and do sell, dispose, assign, transfer, and set over, and appoint the said James G. Gregory and Daniel McIntyre sole managers and conductors of said lottery or lotteries, and transfer to them the sole and exclusive right to draw such scheme or schemes of a lottery or lotteries, under and by virtue of the said act of the Common Council of Alexandria, as they shall, from time to time, deem expedient and proper. And the said James G. Gregory and Daniel McIntyre, on their part, do hereby agree to assume the management of the said lottery or

lotteries, for the purpose of raising the unraised part of the aforesaid sum of sixty thousand dollars. And upon the execution of this agreement, to pay, towards raising the same, the sum of five thousand dollars per annum, in half-yearly payments of two thousand five hundred dollars each; that is to say, on the first day of July, one thousand eight hundred and forty-one, to pay, in advance, the sum of two thousand five hundred dollars, and so on, to pay, for each six months, in advance, the like amount of two thousand five hundred dollars, on the first day of January and first day of July in each succeeding year, until the whole of the unraised part of the aforesaid sum of sixty thousand dollars shall thus have been raised. And the said James G. Gregory and Daniel McIntyre do hereby agree to pay, from time to time, all expenses, costs, and charges attending the drawings, sustain all risks, hazards, losses, and expenses whatsoever; and shall, at the expiration of forty days after the drawing of said lottery or lotteries, pay each and every prize that may be drawn therein, subject to the usual deduction of fifteen per centum, if demanded within twelve months after the drawing. And the said party of the first part do hereby agree, that the amount of the said fifteen per centum on all the prizes sold and paid, and all outlawed prizes, if any such may be, shall belong to the said James G. Gregory and Daniel McIntyre, the party of the second part, which is in consideration of the aforesaid stipulation of certain payments guaranteed to be made by the said James G. Gregory and Daniel McIntyre to the party of the first part, during the continuance of this contract, whether they may succeed in raising said payments, clear of all expenses through and by means of the operations of the lottery or not; and as, from the nature and uncertainty of the business, great losses may be sustained by the said James G. Gregory and Daniel McIntyre, independently of loss of certain sums to the Common Council of Alexandria, the chance of gain to them, of what they may raise over and above these payments and expenses, is considered only as an equivalent for the probable losses of bad debts, and the risks and hazards run by drawings, when only a small portion of any class issued can now be sold. And the said James G. Gregory and Daniel McIntyre, before they proceed to sell the tickets of any lottery, in pursuance and by virtue of this agreement, shall execute and deliver, jointly with three sufficient sureties, to be approved by the Common Council of Alexandria, a bond, conditioned in the penal sum of one hundred thousand dollars, for the faithful execution of this contract, the due and faithful performance of every duty in the management of said lottery or lotteries, and for the due payment of the sums hereinbefore stipulated to be paid to the party of the first part, and of all prizes that may be drawn in said lottery or lotteries. And the said party of the first part do hereby agree, that the said James G. Gregory and Daniel McIntyre shall, in case they may, at any time hereafter, elect so to do, have the power to assign their right, under this agreement, to some other person or persons, who shall, in such case, be bound to comply with the terms of this agreement, and be obliged to give the bond and security required by

the before mentioned act of the Common Council of Alexandria, and by this contract agreed to be done by the said James G. Gregory and Daniel McIntyre; which bond and security shall be first approved by the Mayor of the Corporation of Alexandria. And the said James G. Gregory and Daniel McIntyre, and their assigns, shall, if at any time it found necessary so to do, have the right of consolidating the said lottery or lotteries with the lottery or lotteries of any other State or Territory which may be under his or their management, without limitation as to the amount of such consolidated schemes, or as to the number of drawings, whether within the District of Columbia or out of it. And the said James G. Gregory and Daniel McIntyre further agree, that they will cause to be distinctly printed on the face of the tickets, which may be drawn in every lottery under this contract, the following words: "*The contract rs and managers, with their sureties, are alone responsible for the payment of the prizes;*" it being understood and agreed, between the said James G. Gregory and Daniel McIntyre and the party of the first part, that the said party of the first part are not to be responsible for the payment of the prizes. And the said party of the first part do hereby agree, that the said James G. Gregory and Daniel McIntyre, and their assigns, may abandon, and shall, at all times, be exonerated from the performance of this contract, or ceasing to be managers of said lottery or lotteries, or any responsibility under or by virtue of this agreement, by giving twelve months' notice of such intention to abandon, to the said Mayor or any of the said party of the first part, and paying any money or moneys due to the period of abandonment; and also that the said James G. Gregory and Daniel McIntyre, and their assigns, shall not be bound by this agreement, in the event of such interference by the *legislature, judiciary*, or other competent power, that the lottery business *cannot* be conducted, nor the drawing of schemes take place, in the District; in which case payment to be made up to the time of such interference only.

In witness whereof, the said James G. Gregory and Daniel McIntyre have hereunto set their hands and seals; and the said party of the first part have executed the same by affixing thereto their corporate seal; and the mayor signing the same, in virtue of a resolution entered into for that purpose.

EDGAR SNOWDEN, [SEAL.]
Mayor of Alexandria.
J. G. GREGORY, [SEAL.]
DANL. McINTYRE. [SEAL.]

Signed, sealed, and delivered in presence of—as to the signature of James G. Gregory—
SAMUEL LAZARUS,
JOHN B. JAMES.
Witnesses to the signature of Daniel McIntyre—
ARCH'D ROBERTSON,
WM. ROGERS.
True copy—Test: R. JOHNSTON, C. C.

Bond of Gregory, McIntyre, et al., with the Corporation of Alex.

JAS. G. GREGORY, Daniel McIntyre, Peter McMartin, L. Hemenway, & Charles H. Rogers, to THE CORPORATION OF ALEXANDRIA. } Bond.

Know all men by these presents, that we, James G. Gregory, Peter McMartin, and Luke Hemenway, of Jersey city, in the State of New Jersey, and Daniel McIntire and Charles H. Rogers, of the city of Philadelphia, in the State of Pennsylvania, are held and firmly bound, unto the Common Council of Alexandria, in the penal sum of one hundred thousand dollars, to be paid to the said common council, or their certain attorney; to which payment, well and truly to be made and done, we bind ourselves, our heirs, our executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixteenth day of June, in the year of our Lord one thousand eight hundred and forty-one.

Whereas, by an act of Congress of the United States, entitled An act further to amend the charter of the town of Alexandria, approved May 13th, 1826, it is enacted, "that the Common Council of Alexandria shall have power, &c.," to authorize, with the "approbation of the President of the United States, the drawing of lotteries for effecting any important improvements in and to the town;" and whereas, by an act of the Common Council of Alexandria, passed 5th December, 1827, and approved by the President of the United States, 26th of Feb., 1828, it is enacted—Section 1st. "That the sum of sixty thousand dollars, in sums not more than ten thousand dollars per annum, may be raised by series of schemes of lotteries, to be drawn by commissioners or agents, appointed by the common council, that the products of such lotteries shall be appropriated towards the completion of the road of the Middle Turnpike Company from the intersection of the Leesburg Turnpike Road, in Fairfax county, to Alexandria." Section 2d. It is further enacted, "that for all such scheme or schemes of lotteries that may, in pursuance of this act, be drawn, either by agents or by persons who may purchase one or more schemes thereof, sufficient security shall be taken by the Mayor, and approved by the common council, for the faithful performance of every duty in the management thereof, for the due payment of all sums of money stipulated to be paid to the common council for such schemes, and of all prizes that may be drawn therein."

And whereas, that previously to the signing of these presents, the aforesaid James G. Gregory and Daniel McIntyre have contracted with the Common Council of Alexandria for the sole and exclusive right to draw a scheme or schemes of a lottery or lotteries, in virtue of, and in conformity with, the provisions of said acts, as by reference to the articles of agreement between the said common council, and the said James G. Gregory and Daniel McIntyre, dated the 16th day of June, one thousand eight hundred and forty-one, will more fully appear.

Now, therefore, the condition of the above obligation is such, that if the said James G. Gregory and Daniel McIntyre, or their heirs, executors, administrators, and assigns, do well and truly pay to the holder or holders of any and every prize, or prizes, in any scheme or schemes of lottery or lotteries, which may or shall be drawn, in virtue or pursuance of the acts and contract aforementioned, or which shall purport so to be, as such prize or prizes may become due and legally demanded by the holder or holders thereof, or his, her, or their lawful agent or agents, within the time stipulated on the face of the ticket or tickets; and shall well and truly pay, or cause to be paid, to the treasurer of the Corporation of Alexandria, the several sums of money stipulated on the part of the said James D. Gregory and Daniel McIntyre to be paid, under, and in the contract aforesaid, and at the times fixed and limited therein for paying the same, and shall in all respects execute and perform the stipulations in the said contract contained on their part to be e cuted and performed, so long as, by the terms of said contract, it shall remain in full force, then the obligation to be void, else to be and remain in full force and virtue in law.

J. G. GREGORY, [SEAL.]
P. M. MARTIN, [SEAL.]
L. HEMENWAY, [SEAL.]
DAN'L McINTYRE, [SEAL.]
CHARLES H. ROGERS. [SEAL.]

Signed, sealed, and delivered in presence of—as to the signatures of Jas. G. Gregory, P. M. Martin, and L. Hemenway—

JOHN B. JAMES,
SAMUEL LAZARUS.

Witnesses to the signatures of Dan'l McIntyre and Charles H. Rogers—

ARCH'D ROBERTSON,
WM. ROGERS.

True copy—teste: R. JOHNSTON, *C. C.*

Judgment of court dismissing petition and discharging rule.

And now, to wit, this second day of September, in the year aforesaid, came into the circuit court here the parties aforesaid, by their attornies aforesaid; and the court, after having heard counsel on both sides, and fully understanding the whole matter, and after mature deliberation being thereupon had: Ordered and adjudged, that the said petition be dismissed, and the rule discharged; which was accordingly done.

Test: W. BRENT, *Clerk.*

27th Congress, 2d session. H. R. 470. (No report.)

May 31, 1842. Read twice, and committed to a Committee of the Whole House to-morrow.

Mr. Campbell, of South Carolina, from the Committee for the District of Columbia, reported the following bill:

A bill to suppress the vending of lottery tickets in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of June, one thousand eight hundred and forty-three, every person who shall be duly convicted, in the District of Columbia, of keeping an office or place of business for the sale of lottery tickets, or where lottery tickets shall be sold, or offered for sale, or of vending, or procuring to be vended, or offering, or procuring to be offered, for sale, any lottery ticket, or interest or share in any lottery ticket, or who shall sell any lottery ticket, or part of any lottery ticket, within the said District, shall be sentenced to suffer imprisonment in the common jail of the county, where said offence shall have been committed, for not less than one nor more than six calendar months, and to pay a fine of not less than one hundred nor more than one thousand dollars; one-half of which shall go to the informer, and the other half to the municipal corporation within whose corporate limits the offence shall have been committed, if the same shall have been committed within such limits; and if beyond such limits, then such one-half to be disposed of as other fines for offences against the United States, within the counties of said District respectively: *Provided*, That nothing contained in this act shall be so construed as to interfere with vending of tickets in lotteries authorized by Congress, or with any contract subsisting previous to the first day of June, 1842, between the corporate authorities of either of the cities of the said District, and any individual, or individuals, under any grant in their respective charters; and that all authority heretofore given by any act or acts of Congress, or any other law authorizing the drawing of lotteries, or vending of lottery tickets, within the District of Columbia, be, and the same is hereby, repealed and revoked.

Passed the House of Representatives, June 1st, 1842.

Attest: MW. ST. CLAIR CLARKE, *Clerk*.

IN SENATE OF THE UNITED STATES,
August 8th, 1842.

Resolved, That the bill from the House of Representatives, entitled "An act to suppress the vending of lottery tickets in the District of Columbia," do pass, with the following *amendment*:

Strike out all after the enacting clause, and insert: "That from and after the first day of January, one thousand eight hundred and forty-three, it shall not be lawful to keep, within the District of Columbia, any office or place of business for the sale of lottery tickets, or of any

share or interest in lottery tickets; nor shall it be lawful to sell, or offer for sale, within the said District, any lottery ticket, or any share or interest in any lottery ticket; and every person who shall be duly convicted of offending against the provisions of this act, shall be punished by imprisonment in the common jail of the county in which the offence shall have been committed, for a period not less than one, nor more than six calendar months; and shall forfeit and pay a fine of not less than one hundred, nor exceeding one thousand dollars; one-half of which shall go to the informer, and the other half to the municipal corporation within whose corporate limits the offence shall have been committed; but if committed without the limits of any municipal corporation, then such moiety of the fine shall go to the United States.

Sec. 2. And be it further enacted, That the contract of sale for such lottery ticket or tickets, or share or interest in such lottery ticket or tickets, shall be absolutely void; and the person or persons paying therefor shall have a right to recover back the money paid therefor, as money paid on a void consideration: *Provided*, That nothing herein contained shall be construed to restrain the selling of lottery tickets within the limits of the municipal corporation of the city of Alexandria, so far as the same is authorized by any existing contract made by the common council of said city, under the provisions of an ordinance of the common council of the said city, passed on the fifth day of December, eighteen hundred and twenty-seven, and approved by the President of the United States on the twenty-sixth day of February, eighteen hundred and twenty-eight, under the provisions of its charter."

Attest: ASBURY DICKENS, *Secretary.*

IN THE HOUSE OF REPRESENTATIVES,
August 20, 1842.

Resolved, That the House concur in the foregoing amendment of the Senate, to bill (H. R. No. 470,) entitled "An act to suppress the vending of lottery tickets in the District of Columbia," with the following amendment:

Sec. 2, line 7. Strike out all after the word "provided," and in lieu thereof, insert the following:

That nothing in this act contained shall be construed to impair or interfere with any lawful contract heretofore entered into by the corporate authorities of any of the cities or towns in the District of Columbia, authorizing and licensing the drawing of a lottery or lotteries, or the sale of lottery tickets, or shares, or interests in lottery tickets; but the privileges conferred by such contracts or licenses, shall remain as though this act had not been passed. Provided further, That it shall not be lawful, under color of any contract entered into with any corporate city or town in the District of Columbia, authorizing the drawing of a lottery, to vend or sell tickets, or parts of tickets, or shares, in a lottery or lotteries, authorized by the legislature of any State or Territory within the United States, or any foreign government.

Attest: MW. ST. CLAIR CLARK.

IN THE SENATE OF THE U. S.
August 25, 1842.

Resolved, That the Senate disagree to the foregoing amendment of the House of Representatives to the bill within mentioned.

Attest: ASBURY DICKENS, *Secretary.*

IN THE HOUSE OF REPRESENTATIVES, U. S.
August 25, 1842.

Resolved, That this House insist on its amendment to the amendment of the Senate to the bill (H. R. No. 470,) entitled "An act to suppress the vending of lottery tickets in the District of Columbia," and ask a conference with the Senate on the subject matter of the disagreeing votes of the two Houses thereon.

Mr. Underwood, Mr. Aycrigg, and Mr. Hopkins, were appointed managers at said conference on the part of this House.

Attest: M'W ST. CLAIR CLARKE, *Clerk.*

IN SENATE OF THE UNITED STATES,
August 27, 1842.

Resolved, That the Senate insist on their disagreement to the amendment of the House of Representatives to their amendment to the above bill, and agree to the conference asked by the House on the disagreeing votes of the two Houses on said bill.

Ordered, that Mr. Bayard, Mr. King, and Mr. Choate, be the committee of conference on the part of the Senate.

Attest: ASBURY DICKINS, *Secretary.*

IN SENATE OF THE U. STATES,
August 29, 1842.

The committee appointed to conduct the conference on the part of the Senate, upon the subject of the disagreeing votes of the two Houses upon the amendment of the House to the amendment of the Senate to the bill of the House, entitled "An act to suppress the vending of lottery tickets in the District of Columbia," have met a committee appointed on the part of the House, and after a full and free conference upon the subject of said disagreeing votes, the said committee have agreed to recommend, and do recommend, to their respective Houses, the following proviso, as a substitute for that contained in the second section of the amendment of the Senate to the bill, viz:

Provided, That nothing herein contained shall be construed to restrain the selling of lottery tickets, so far as the same is authorized by any existing contract made by the common council of the city of Alexandria, under an ordinance of the common council of the said city, passed on the 5th day of December, 1827, and approved by the President of the United States, if such contract is made, and so far as the same is made, in conformity with the provisions of its charter, [nor so far as the selling of the same is authorized by *any subsisting license*, of any of the cities of the said District, for the period of *one year* from the passage of this act.] And provided further, That it shall not be law-

ful, under color of any contract made with the common council of the said city of Alexandria as aforesaid, to vend or sell tickets, or parts of tickets, or shares, in any lottery or lotteries authorized by the legislature of any State Territory within the United States, or any foreign Government.

Whereupon,

Resolved, That the Senate agree to the report of the committee of conference, and that the bill be amended accordingly.

Attest: ASBURY DICKENS, *Secretary.*

CAPITOL UNITED STATES,
Clerk's Office, Ho. Reps., June 21, 1845.

I certify the foregoing to be a true copy from the original in this office.

In testimony whereof, I have hereto subscribed my name, and
[SEAL.] affixed the seal of the House of Representatives of the United States, this 21st June, 1845.

B. B. FRENCH, *Clk. H. R. U. S.*
By DAN. GOLD, *Chief Clerk.*

Writ of error produced.

And whereas, afterwards, to wit, on the twelfth day of November, in the year of our Lord one thousand eight hundred and forty-five, the said relator, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's certificate and seal.

In testimony whereof, I have hereunto subscribed my name
[SEAL.] and affixed the seal of said court, this 8th day of December, 1845.

W. BRENT, *Clerk.*

Filed, 8th Dec'r, 1845.